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FOR COORDINATION WITH State

TEXT
SR3

E.O. 12356: DECL:OADR
TAGS: SHUM, PREL, CI
SUBJECT: DEMARCHE TO GOC ON WALTER RAUFF CASE
1. S - ENTIRE TEXT
2. ARA DEPUTY ASSISTANT SECRETARY MICHEL CALLED IN CHILEAN CHARGE ERRAZURIZ MARCH 12 TO REITERATE THE DEMARCHE MADE BY AMBASSADOR THEBERGE TO CHILEAN FOREIGN MINISTER DEL VALLE ON MARCH 6 IN SUPPORT OF THE FRG REQUEST THAT THE GOC DEPORT ACCUSED EX-NAZI WALTER RAUFF.
3. MICHEL TOLD ERRAZURIZ THAT IN THE CONTEXT OF THE LONG-STANDING U.S. POLICY OF EXPLORING ALL AVENUES TO BRING TO JUSTICE SUSPECTED NAZI-WAR CRIMINALS, THE UNITED STATES STRONGLY SUPPORTS THE FRG REQUEST THAT THE-GOC DEPORT RAUFF. MICHEL NOTED THAT RAUFF IS ONE OF -THE MOST NOTORIOUS NAZI'S NOT YET BROUGHT TO JUSTICE AND THAT HE IS ACCUSED OF DIRECTING THE EXTERMINATION OF OVER 90,000 INDIVIDUALS. THE UNITED STATES RECOGNIZES THAT THIS MATTER WAS DEALT WITH BY THE CHILEAN SUPREME COURT.

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CENTRAL INTELLIGENCE AGENCY
SOURCES METHODS EXEMPTION 3828
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HOWEVER, MICHEL SAID THAT FRG REQUEST RE-OPENS THE QUESTION. -

4. SECOND, MICHEL TOLD ERRAZURIZ THAT WHILE THE SUPREME COURT'S EARLIER DECISION MIGHT COMPLICATE THIS ISSUE, THE CHILEAN CONSTITUTION OF 1980 HAS CREATED A NEW SET OF LEGAL CIRCUMSTANCES WHICH APPEAR TO GIVE THE GOC FLEXIBILITY WHERE NONE MAY HAVE EXISTED BEFORE.

5. MICHEL EMPHASIZED TO ERRAZURIZ THAT THE U.S. RECOGNIZES THE GOC'S REJECTION OF TOTALITARIAN PHILOSOPHIES. HOWEVER, FAILURE TO RESPOND TO THE FRG REQUEST COULD RAISE PUBLIC DOUBTS ABOUT THE GOC'S POSITION. THE RAUFF CASE HAS RECEIVED A GREAT DEAL OF PUBLICITY. REJECTION BY THE GOC OF THE FRG REQUEST WILL CARRY SIGNIFICANT NEGATIVE IMPLICATIONS FOR CHILE, PARTICULARLY GIVEN THE DISTINGUISHING LEGAL CONTEXT WHICH NOW EXISTS.

6. ERRAZURIZ RESPONDED THAT HE WOULD CONVEY MICHEL'S POINTS TO THE FOREIGN MINISTRY. HE THEN INDICATED THAT THE GOC WAS SURPRISED THAT THIS ISSUE WAS BEING RAISED 20 YEARS AFTER THE EXTRADITION CASE. NEVERTHELESS, HE SAID THAT HE WANTED TO MAKE ABSOLUTELY CLEAR THAT THE GOC WAS OPPOSED TO NAZISM REGARDLESS OF WHAT ACTION WAS TAKEN ON THE RAUFF CASE. MICHEL SAID THAT WE UNDERSTOOD THIS POINT AND HAD NOTED THAT GOC OPPOSITION TO SUCH PHILOSOPHIES WAS MADE EXPLICIT IN THE 1980 CONSTITUTION.

7. ERRAZURIZ THEN SAID THAT AS THE GOC HAD TOLD SIMON WIESENTHAL, THE GOC HAS NO PROBLEM WITH REOPENING THE EXTRADITION CASE BASED ON NEW EVIDENCE. IN THE INTERIM, THERE ARE NO GROUNDS TO DEPORT RAUFF WHO HAS LIVED IN CHILE FOR OVER 25 YEARS AS A RESPECTABLE CITIZEN. DURING THIS PERIOD RAUFF HAS NOT PROSELYTIZED IN CHILE FOR NAZISM EITHER PUBLICLY OR PRIVATELY. HE HAS LIVED PEACEFULLY WITHIN THE LAW AND THERE DO NOT, THEREFORE, APPEAR TO BE ANY GROUNDS TO DEPORT HIM. ERRAZURIZ SAID THAT THESE POINTS WERE MADE BY THE FOREIGN MINISTRY TO THE FRG BY WAY OF A GENERAL RESPONSE TO THE FRG DEMARCHE. ERRAZURIZ THEN SAID THAT IT IS A MATTER OF SOME CONCERN THAT CHILE IS BEING URGED TO GO BEYOND THE LAW AND FURTHERMORE, THAT OTHERS ARE MAKING

INTERPRETATIONS OF CHILEAN LAW, AN ACTION WHICH COULD BE INTERPRETED AS INTERFERING IN CHILE'S INTERNAL AFFAIRS.

8. MICHEL TOLD ERRAZURIZ THAT IF THE SUPREME COURT DECIDED THAT RAUFF COULD NOT BE EXTRADITED BECAUSE THE STATUTE OF LIMITATIONS HAD RUN OUT, IT WOULD BE DIFFICULT TO FIND NEW EVIDENCE TO REOPEN THE CASE. ERRAZURIZ THEN COMMENTED ON THE HISTORY OF THE CASE, SUGGESTING THAT SINCE IT WENT TO THE APPEALS COURT THAT THERE WAS SOME POSSIBILITY OF RE-OPENING THE CASE. MICHEL NOTED THAT, IN TAKING THE DECISION TO SEEK RAUFF'S DEPORTATION, THE FRG UNDOUBTEDLY CONSIDERED THE OTHER LEGAL POSSIBILITIES AND DECIDED AGAINST THEM.

FOR VALID EVIDENCE TO BE INTRODUCED IN THE FIRST EXTRADITION CASE, MICHEL SAID THAT IT WAS DOUBTFUL THAT OTHER EVIDENCE COULD NOW BE SUBMITTED WHICH WOULD MEET THAT CRITERIA.

9. ON THE OTHER HAND, MICHEL REITERATED TO ERRAZURIZ

SECRET

THAT THE CHILEAN CONSTITUTION OF 1980 APPEARS TO OPEN NEW POSSIBILITIES FOR DEALING WITH RAUFF. MICHEL THEN QUOTED TRANSITORY PROVISION 24, ARTICLE C WHICH ALLOWS FOR - PRESIDENTIAL EXPULSION FROM CHILE OF "THOSE WHO PROPAGATE DOCTRINES ALLUDED TO IN ARTICLE 8 OF THE CONSTITUTION, - (AND) THOSE ACCUSED OF BEING OR HAVE REPUTED TO BE ACTIVISTS FOR SUCH DOCTRINES...." MICHEL NOTED THAT THE CONSTITUTION DOES NOT ESTABLISH A TIMEFRAME FOR APPLYING THE STANDARDS OF PARAGRAPH C. WHILE THIS PROVISION MAY RAISE A QUESTION OF LEGAL INTERPRETATION, MICHEL NOTED THAT CLEARLY THERE WAS NO QUESTION OF ADVOCATING THAT CHILE ACT IN AN EXTRA-LEGAL MANNER. ON THE CONTRARY, WE ARE URGING THAT IT ACT IN COMPLIANCE WITH ITS - CONSTITUTION. WITH REGARD TO ERRAZURIZ'S REFERENCE TO WIESENTHAL, MICHEL SAID THAT HE HOPED THAT ERRAZURIZ WAS AWARE OF WIESENTHAL'S RECENT MEETING WITH PRESIDENT REAGAN.

10. ERRAZURIZ SAID THAT IF HIS GOVERNMENT'S RESPONSE WAS NEGATIVE IT WAS ONLY BECAUSE THE LAW DID NOT ALLOW IT. THE GOC'S POSITION ON CRIMES AGAINST HUMANITY WAS WELL ESTABLISHED THROUGH VARIOUS RECORDED VOTES IN THE U.N. ERRAZURIZ SAID THAT HE HOPED THIS MATTER -WOULD NOT BECOME AN ISSUE IN U.S.-CHILEAN RELATIONS. THE U.S. MUST ACCEPT THAT THE RAUFF CASE IS A SOVEREIGN MATTER TO BE DECIDED BY THE GOC. THERE WERE OTHER MATTERS, OF WHICH MICHEL WAS AWARE, ERRAZURIZ SAID, THAT CLEARLY FELL WITHIN THIS CONTEXT IN THE U.S. AND WHICH CHILE, WHILE-OBJECTING, HAD TO ACCEPT (A REFERENCE TO THE CONTINUING ARMS EMBARGO AND ABSENCE OF PRESIDENTIAL CERTIFICATION). -

11. MICHEL SAID THAT THE FRG REQUEST WAS NOW A MATTER OF RECORD TO WHICH THE GOC WOULD HAVE TO RESPOND. THE-U.S. HAS INDICATED ITS STRONG SUPPORT FOR THIS REQUEST IN THE CONTEXT OF OUR WORLD-WIDE CONCERN THAT NAZI WAR CRIMINALS BE BROUGHT TO JUSTICE. OUR POSITION AND THE FRG REQUEST WERE FACTS THE GOC WOULD NOW HAVE TO ADDRESS. WE ARE ASKING THE GOC TO EXAMINE ITS LAW TO SEE IF THIS REQUEST CANNOT BE GRANTED. OUR REQUEST IS CONSISTENT WITH THE POSITION, WHICH WE HOPE ALL NATIONS SHARE, THAT THESE CRIMINALS BE BROUGHT TO JUSTICE.

12. ERRAZURIZ SAID THAT THIS MATTER WILL BE DECIDED FIRST ON THE BASIS OF THE SELF-INTEREST OF CHILE AND SECOND IN COMPLIANCE WITH CHILEAN LAW.

13. MICHEL RESPONDED THAT THE OBJECT OF THE LAW IS JUSTICE. THE RESPONSIBILITY IN THIS MATTER IS TO SEE IF THE LAW CAN BE APPLIED TO FURTHER THE CAUSE OF JUSTICE. THIS IS THE BASIS FOR THE U.S. POSITION THAT NAZI WAR CRIMINALS SHOULD BE BROUGHT TO TRIAL. THE U.S. POSITION IS NOT SINGULAR TO CHILE. WE ARE PURSUING RAUFF NOT BECAUSE HE WAS FOUND IN CHILE, BUT BECAUSE HE WAS FOUND. THE U.S. WOULD MAKE THE SAME APPROACH WHEREVER SUSPECTED NAZI WAR CRIMINALS WERE TO BE FOUND. MICHEL ENDED BY ASKING ERRAZURIZ TO CONVEY THE U.S. POSITION TO HIS GOVERNMENT AND BY PROVIDING HIM WITH THE TEXT OF THE NON-PAPER ON RAUFF WHICH AMBASSADOR THEBERGE HAD GIVEN TO FOREIGN MINISTER DEL VALLE ON MARCH 6. SHULTZ